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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No. 4035 of 2007(O&M)

Date of decision: 6.9.2007

Harpreet Singh **...Petitioner**

Versus

The Singhpura Co-operative House Building Society Ltd.

and another **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Anmol Rattan Sidhu, Senior Advocate with
Mr. Vishal Deep, Advocate for the petitioner.

Mr. Charanjeet Singh, Advocate for the respondent.

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RAJESH BINDAL, J.

Challenge in the present petition, filed under Article 227 of the Constitution of India, is to the order dated June 9, 2007 passed by the learned Additional District Judge (Adhoc), Patiala whereby in appeal filed by the respondent, interim order granted by the trial court was vacated.

The claim made in the suit, filed by the petitioner, was that respondent-society had entered into an agreement with the petitioner through its the then Secretary Mohinder Pal Singh for sale of 41 bighas 11 Biswas of land belonging to the society at Rs. 14 lacs per acre and received a sum of Rs. 5 lacs in cash as earnest money. The last date for execution of sale deed was fixed at September 30, 2005. As the respondent failed to execute the sale deed, petitioner had approached the Civil Court by filing a suit for specific performance in which application under Order 39 Rule 1 and 2 read with Section 151 of the Code of Civil Procedure was filed for restraining the respondents from alienating the suit land to any one else except the petitioner/plaintiff and also restraining them from raising any construction. The application was allowed by learned Civil Judge (Junior

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Division), Rajpura vide order dated September 20, 2006, which in appeal, by the respondents, was reversed by the learned Lower Appellate Court.

I have heard learned counsel for the parties and perused the material placed on record.

It is contended by the learned Senior Counsel for the petitioner that the Secretary of the society was duly authorised by the resolution of the society to sell the land in question and in terms of the authority, so granted to him, he had entered into an agreement with the petitioner for sale of the land. On the date fixed petitioner appeared before the Sub Registrar for registration of sale deed, however, none was present on behalf of the respondents with the result the petitioner had no other choice but to file a suit for specific performance. He submitted that in case during the pendency of the suit, the respondents dispose of the property or raise construction thereon, serious prejudice will be caused to the petitioner. Still further it is submitted that respondent-society is trying to create evidence by filing suit against Ex-Secretary Mohinder Pal Singh of the society, expelling him from the membership and also lodging FIR only for the reasons that value of the property had increased.

On the other hand, learned counsel appearing for the respondents submitted that the then Secretary Mohinder Pal Singh was not authorized to sell the property in dispute as had been admitted by him in the written statement filed in a suit filed by the respondent-society against him. Still further, it is admitted by Mohinder Pal Singh in written statement that there was legal bar in the disposal of the property referred to the agreement to sell. It was submitted that though the agreement is stated to have been signed on May 23, 2005 but it refers to a resolution dated May 24, 2005authorizing Mohinder Pal Singh, the then Secretary to sell land which is highly improbable. It is further submitted that even the earnest money of Rs. 5 lacs received by Mohinder Pal Singh was in cash and the same was also not deposited in the account of the society and it was only after lodging of the FIR that the same was deposited by him. Still further, it is submitted that it is connivance of the petitioner with the then Secretary Mohinder Pal

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Singh that this agreement was entered into and for that reason even the petitioner has been named as one of the accused in the FIR lodged by the respondents.

Keeping these facts in view, learned Lower Appellate Court had reversed the order passed by the learned trial Court granting injunction in favour of the petitioner with the following observations:-

> "From the perusal of the agreement to sell dated 23.5.2005, it is clear that in the agreement itself, it is mentioned that Mohinder Pal Singh, Secretary has been authorised to execute the agreement to sell vide resolution dated 24.5.2005. Even, no resolution dated 24.5.2005 has been placed on the file. From the copy of resolution dated 5.9.2004, it is clear that no authority has been given to the Secretary Mohinder Pal Singh to execute any agreement to sell regarding the suit land. From the bye laws of the society placed on the file, it is clear that as per bye laws No.46, there is bar against the alienation of the property of the society and no member of the society, is authorised to alienate any land of the society accept to a member of the society. Even, from the copy of the written statement filed by the defendant no.2 in suit titled as Singhpura Co-operative Society Versus Mohinder Pal Singh, suit No.473 dated 22.9.2005, it is clear that the defendant No.2 has stated in the written statement that he had no authority to sell the land of the society. It is also admitted fact that regarding execution of alleged agreement to sell dated 23.5.2005 by the defendant no.2, FIR No.218 dated 8.6.2006 has been registered against the defendant no.2 under section 406/420 IPC at Police Station, Derabassi. So, from the documents placed on the file, it is clear that the alleged agreement to sell dated 23.5.2005 has been executed by defendant no.2 in favour of the plaintiff/respondent no.1 without any authority. Defendant no.2 was not having any authority to execute an agreement to

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> sell in favour of the plaintiff/respondent no.1. So, no prima facie case for grant of injunction in favour of the plaintiff/respondent no.1 is made out. The trial Court has wrongly granted injunction in favour of the plaintiff and the impugned order is not a legal and valid order and is against the law and facts on the record and is set aside."

Even before this Court, the contentions are the same as noticed above. In my opinion, keeping in view the facts and circumstances of the case and the material on record, prima-facie case for grant of injunction in favour of the petitioner is not made out and the learned Lower Appellate court had rightly reversed the order passed by the trial court granting injunction in favour of the petitioner. Facts in detail are not discussed, lest the same may prejudice the case of any of the parties to the suit.

Accordingly, I do not find any merit in the present petition and the same is dismissed.

September 06, 2007 **(Rajesh Bindal)**
Pka **Judge**